IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

Crl.MC.No. 327 of 2007()

CRL.M.P.1075/2007 OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, CHALAKKUDY

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PETITIONER:

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1. RINEESH, AGED 27 YEARS,
   S/O.E.K.RAVINDRAN, JEWELUX AUTO BODY BUILDERS,
   VISHNUPURAM, CHERANELLORE, ERNAKULAM.

2. JOSE AGED 40 YEARS, S/O.LONNAN,
   JEWELUX AUTO BODY BUILDERS,
   VISHNUPURAM, CHERANELLORE, ERNAKULAM.

3. PAUL AGED 43 YEARS, S/O.FRANCIS,
   JEWELUX AUTO BODY BUILDERS,
   VISHNUPURAM, CHERANELLORE, ERNAKULAM.

BY ADV. SRI.BEPIN VIJAYAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. JOSEPH PAUL, S/O.JOSEPH,
   PALLIPATTU HOUSE, THEKKE ANGADY, KORATTY P.O.,
   TRICHUR DISTRICT.

BY PUBLIC PROSECUTOR, SRI.S.U.NAZER
FOR R2 SRI.C.HARIKUMAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.327 of 2007

Dated this the 12th day of February 2007

O R D E R

I have heard the learned counsel for the petitioners and the learned counsel for the second respondent/complainant. The dispute relates to a vehicle which the second respondent had entrusted to the petitioners for body building work. There is a dispute between the petitioners and the second respondent and the second respondent has filed a complaint before the learned Magistrate. Cognizance has not been taken on the basis of that complaint and no summons has been issued to the petitioners so far, it is submitted. But the petitioners have received a notice under Section 91 Cr.P.C under which they have been directed to produce the vehicle concerned before the learned Magistrate.

2. The petitioners appeared through counsel before the learned Magistrate and it is submitted that the petitioners asked for time to produce the vehicle. The petitioners have come to this court with the submission that they are not liable to produce the vehicle and that they could not physically produce the vehicle before the learned Magistrate. They submit that they

have a right of lien on the vehicle under the civil law and until all the amounts due to them is paid and discharged by the complainant, they are not liable to return the vehicle to the complainant. The learned counsel for the second respondent submits that the second respondent is willing to pay all the amounts which according to the petitioners is liable to be paid under the agreement and all further amounts legally payable but the petitioners are illegally retaining the vehicle and that is why he is obliged to file a complaint before the learned Magistrate.

3. Be that as it may, I am not proceeding to consider the dispute raised by the rival contestants. I am satisfied, as agreed by the counsel for the rival contestants that a direction can be issued to the learned Magistrate to permit the petitioners to raise all their objections before the learned Magistrate. After considering such objections, appropriate orders shall be passed under Section 91 Cr.P.C by the learned Magistrate.

4. In the result, this Criminal Miscellaneous Case is allowed and it is directed that the petitioners shall be given an opportunity by the learned Magistrate to appear before the learned Magistrate and raise their objections against the

direction for production of the vehicle. After considering such objections, appropriate directions shall be passed by the learned Magistrate. Till then vehicle shall be kept in the custody of the petitioner in the same condition in which it presently is.

Hand over copy of this order to the learned counsel for both contestants, immediately.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006